

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SAMMY LEE CASEY-EL,)
)
 Plaintiff,)
)
 v.) No. 4:10CV2177 SNLJ
)
 ABLE RACK COMPANY, et al.,)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of plaintiff for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will partially dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or

fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. Spencer v. Rhodes, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), aff’d 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

The Complaint

Plaintiff brings this action under Title VII and the Missouri Human Rights Act for race and age discrimination. Named as defendants are Able Rack Company, Craig Bering, and Ed Holdack. Plaintiff, an African-American, alleges that he was laid off after defendant Bering hired a younger, inexperienced, Caucasian man for the same position.

Plaintiff’s only allegation regarding defendant Holdack states: “[Bering] attempted to accuse him of the discriminatory act.”

Discussion

The complaint survives initial review as to defendants Able Rack Company and Bering. As a result, the Court will order the Clerk to serve process on the complaint as to these defendants.

The allegations against Holdack do not state any facts that would entitle plaintiff to relief. As a result, the Court will dismiss Holdack from the complaint.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that defendant Ed Holdack is **DISMISSED** from this action.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue as to defendants Able Rack Company and Craig Bering.

An appropriate Order of Partial Dismissal shall accompany this Memorandum and Order.

Dated this 6th day of December, 2010.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE